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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,249	08/15/2000	Peter Alan Smith	CU-2328 TFP	9730

7590 11/19/2003

Thomas F Peterson
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Chicago, IL 60604

EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/622,249

Applicant(s)

SMITH, PETER ALAN

Examiner

Joseph F Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 22-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,330,598 to Whiteside in view of U.S. Patent No. 5,868,461 to Brotherston.

Whiteside discloses a chair that is basically the same as that recited in claims 22-41 except that the chair lacks an underlay, a seat back pivot, wheels, and an a metal frame support structure with plastic sheet material, as recited in the claims. See Figures 1-5 of Whiteside for the teaching that a chair has a seat portion 12 (Fig. 1), a backrest portion 14 (Fig. 1), at least one air-containing cushion 18,20 (Fig. 1) on the seat that may be selectively pressurized prior to use, at least one air-containing cushion 22,24 (Fig. 1) on the backrest containing a bladder that may be selectively pressurized prior to use wherein an upper backrest cushion overlaps a lower backrest cushion (see Fig. 1), the lower backrest cushion overlaps the cushion of the seat, the upper backrest cushion extends over the upper edge of the backrest portion, and the bladder would assume an oblong shape if charged with air equal to a maximum contained volume, a layer of compressible foam material (see column 2, lines 1-8) that overlays the cushions, an upholstery material covering 16 (Fig. 1) that covers the compressible foam

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material, and air valves 18c,20c,22c,24c (Fig. 8) through which air is admitted. Also, see Figures 2 and 5 of Whiteside for teaching that the bladders of the cushion are charged with a pressure substantially less than the maximum contained volume wherein the air displaced ranges from 15% to 60% of the maximum contained volume.

Brotherston shows a chair similar to that of Whiteside wherein the chair has a pivotable backrest 12 (Fig. 1), a seat portion 14 (Fig. 1), a pivotable seat support structure 81 (Fig. 2), and a leg support 75 (Fig. 1) made of metal frame members 16,18 (Fig. 1), plastic sheet material (see Fig. 1), and wheels 62 (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the chair of Whiteside such that the chair has a foam sheet underlay positioned below the cushions and having a higher density than that of the overlay, a backrest support structure pivotably mounted to the seat support structure, wheels, a pivotable seat support structure, and a pivotable leg support portion with cushion and overlaying materials wherein the backrest and seat support structure are metal frames with plastic sheet material that support the cushions, such as the chair disclosed in Brotherston. One would have been motivated to make such a modification in view of the suggestion in Brotherston that the chair with the metallic, pivotable leg, seat, and backrest support structures allows for a reclining support of a user for long periods of time.

3. Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whiteside in view of Brotherston as applied to claims 22-41 above, and further in view of U.S. Patent No. 5,687,438 to Biggie et al.

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Whiteside, as modified, discloses a chair that is basically the same as that recited in claims 42 and 43 except that the type of fastening material for the cushions and upholstery is not specified, as recited in the claims. Biggie et al. show a chair similar to that of Whiteside wherein the chair has seat portion (Fig. 1), a backrest portion (Fig. 1), at least one air-containing cushion 12 (Fig. 1) positioned on the seat, at least one air-containing cushion positioned on the backrest 12 (Fig. 1), and upholstery material 18 (Fig. 1) covering the cushions wherein the cushions and upholstery material are secured in place by the use of self-securing fastening materials 31,32 (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the chair of Whiteside such that the cushions and upholstery material have self-securing fastening materials, such as the chair disclosed in Biggie et al. One would have been motivated to make such a modification in view of the suggestion in Biggie et al. that the cushions and upholstery materials with self-securing fastening materials allow for cushions and upholstery that may be easily removed for cleaning.

Response to Arguments

4. Applicant's arguments, see page 2, lines 7-17, filed 03 September 2003, with respect to 35 U.S.C. §112, second paragraph, have been fully considered and are persuasive. The rejection under 35 U.S.C. §112, second paragraph, of claims 9 and 22 has been withdrawn. Applicant's arguments filed 03 September 2003 with respect to the 35 U.S.C. §§102 and 103 have been fully considered but they are not persuasive.

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Applicant argues the chair of Whiteside teaches away from the features of the instant invention that a chair has cushions under inflated and suspended from a frame.

Further, applicant argues that there would be no motivation to modify the teachings of Whiteside in view of Brotherston such that the cushions are suspended from a frame because the chair of Brotherston is disclosed for a completely different purpose.

Initially, Figure 4 of Whiteside clearly shows a cushion under inflated resting on a generic seat type 10 wherein the frame structure of the seat is not specified. Although the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, motivation does exist in the teachings of Brotherston that a chair having a frame with seat and back portions extending therebetween, a pivotally mounted backrest, a pivotally mounted leg support portion, and wheels allows for a chair that is mobile and provides superior comfort to the user in a plurality of positions and for extended periods of time. See the above rejection for further motivation.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



JE

November 14, 2003



Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600